IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 27408 of 2007(K)

PETITIONER:

RENCHU OMMEN,
KIZHAKKEKKARA HOUSE, KUMBAZHA P.O.,
PATHANAMTHITTA.

BY ADV. SRI.V.K.SUNIL

RESPONDENTS:
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1. STATE OF KERALA,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE MALLAPPALLY BLOCK PANCHAYATH,
REPRESENTED BY ITS SECRETARY, MALLAPPALLY.

3. THE PROJECT OFFICER,
DRDA, PATHANAMTHITTA.

BY GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 27408 OF 2007
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Dated this the 14th day of September, 2007

J U D G M E N T

The challenge in this writ petition is against Ext.P19 order of termination of contract that was entered into by the petitioner, in so far as the termination is at the risk and cost of the petitioner. Petitioner is not aggrieved by the termination as such, but is only complaining against that part of it, which is at his risk and cost.

2. The fact remains that the work awarded to the petitioner was not completed by him. Petitioner submits that it is only because of the indifference of the respondents in discharging their contractual obligations that he could not perform the contract. On the other hand the allegation in Ext.P19 is that it is on account of the fault of the petitioner that the work could not be completed. Thus both the parties are raising allegations against each other and necessarily in

order to relieve the petitioner from the risk and cost Clause of the contract, adjudication on the justifiability of the claim of each of the parties is necessary. It also requires appreciation of evidence. This cannot be done in a proceedings under Article 226 of the Constitution of India. Therefore, without prejudice to the right of the writ petitioner to move appropriate forum, this writ petition is dismissed.

ANTONY DOMINIC, JUDGE.

Rp